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A

ACTIONS.

See PRACTICE, CIVIL. POSSESSION. EQUITY. CONTRACTS. BILLS OF EXCHANGE.

1. *Slander—Pleading.*—When the slanderous words used do not of themselves impute to the plaintiff the commission of a crime or offence involving moral turpitude, or some infamous punishment, the petition must contain an averment of the extrinsic matter necessary to show that the words are actionable. The words "he is a bushwhacker" are not actionable *per se*. Where the ground of complaint is that the plaintiff has been injured in his character, reputation, or business, the action cannot be maintained without an averment that the words were spoken of the plaintiff in reference thereto, and the words become actionable by reason of some special damage which must be averred and proved as laid.—Curry v. Collins, 324.

2. *Trespass—Damages—Attachments.*—Where several attachments are successively levied upon goods not the property of the attachment debtor, the attachment creditors are not joint trespassers, and are not liable to contribution as such (R. C. 1855, p. 649); but where several creditors, thus attaching, are sued as joint trespassers, and judgment recovered, the judgment is conclusive as to their liability to contribution.—Brewster et als. v. Gauss et al., 518.

3. *Strays—Possession.*—The possession of personal property which will authorize an action for its recovery must be a lawful possession. Where a party took up a stray, which he kept in his possession for a year without proceeding as a taker up of a stray animal under the statute R. C. 1855, p. 1506, he is to be treated as a trespasser *ab initio*, and cannot recover possession of the animal from a party into whose possession the animal may have again come as a stray.—Bayless v. Lefaivre, 119.

ADMINISTRATION.

1. *Personalty.*—The title to personal property, upon the death of the owner, passes to the administrator or executor, and he only can sue for the property or for an injury thereto.—Smith et als. v. Denny et als., 20.

2. *Concealing Assets.*—The provisions of the statute, R. C. 1855, p. 130, §§ 10 & 11, apply only to cases where the person charged with concealing or embezzling the assets, has the goods in actual possession at the time of the commencement of the proceedings. If the property has passed from the possession of the person so charged, the common law rights of action still re-

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main to the executor, but he is precluded from further prosecuting the statutory remedy, because it would be unavailing.—Howell's Exec'r, v. Howell, 124.

3. *Evidence—Presumption.*—If it be shown that a party has possession of the assets of an estate after the death of a testator, the law presumes that such possession is continued, until the contrary is proven.—*Id.*

ARBITRATORS AND AWARDS.

1. *Practice—Supreme Court.*—It is too late to urge in the Supreme Court, as an objection to an award, that the arbitrators were not sworn; the objection should have been made in the court below.—Vallé v. North Missouri R.R. Co., 445.

2. *Award.*—It is not necessary, under the statute, that an award should be attested by a subscribing witness, unless the submission provides that the award shall be made the judgment of the Circuit Court, and be enforced according to the provisions of the statute. (R. C. 1855, p. 195, § 6.)—*Id.*

3. *Award—Mistake of Arbitrators.*—An award will not be set aside upon motion, or vacated for any mistake of law or fact that does not appear upon the face of the award itself. But where a court of equity is resorted to, to set aside an award on the ground of fraud, prejudice, or mistake, extrinsic evidence may be resorted to, and the arbitrators may themselves be witnesses. A court of equity will not relieve those who have not used due diligence to protect themselves.—*Id.*

ASSIGNMENTS.

1. *Account—Bill of Exchange.*—Under the statute, an account may be assigned in writing. A bill of exchange drawn upon a particular fund does not operate as an equitable assignment of the fund although the drawee promise to pay any balance that may be in his hands. (Kimball v. Donald, 20 Mo. 577.)—Ford v. Angelrodt et al., 50.

2. *Mortgage—Deed of Trust.*—A conveyance of property to trustees to sell, to pay the debts of the grantor, without condition, is an assignment for the benefit of the creditors named and preferred.—State to use, &c., v. Benoist et als., 500.

3. *Frauds.*—In general, a party may assign his property as he pleases; but where there are numerous creditors, he cannot use an assignment as a means of preserving his property from the lawful actions and demands of his creditors. An assignment made with intent to delay, hinder or defraud creditors, is fraudulent. Where such intent appears upon the face of the instrument, it will be declared void, as a matter of law. The essence of the fraud consists in the fact, that the deed is not made in good faith for the payment of honest debts, but for the advantage of the grantor, and for the purpose of postponing and defeating the just claims of creditors.—*Id.*

4. *Preferences.*—An assignor may make preferences, by making a partial assignment for the benefit of particular creditors, but in so doing the assignment must be made for the genuine purpose of paying honest debts, and not for the use and benefit of the grantor, nor to hinder, delay and defraud other creditors.—*Id.*

ATTACHMENTS.

1. *Estoppel—Record.*—A judgment against a garnishee summoned in an attachment suit is conclusive only upon parties to the suit, and does not affect strangers to the record. (Funkhouser v. How, 24 Mo. 44.)—Dobbins et al. v. Hyde et al., 114.
2. *Residence.*—Where a defendant makes provision for his family and leaves them at his residence, although he may be personally absent an indefinite period of time, attending to his business, no attachment will lie, as the law has provided the mode by which process may be served; but where he leaves the country, and places his family with a relative to sojourn, the presumption is that he has no fixed place of abode.—Adams' Adm'r v. Abernathy et al., 196.
3. *Execution—Garnishment.*—In order that an indebtedness may be liable to garnishment, it must be shown to be absolutely due as a money demand, unaffected by liens or prior encumbrances, or conditions of contract.—Scales et al. v. Southern Hotel Co., 520.
4. *Corporations—Stocks.*—Shares of stock in an incorporated company cannot be levied on by an attachment. The statute of this State has not changed the common law rule in such cases.—Foster v. Potter, 525.

ATTORNEYS.

1. *Practice—Demand.*—Before an attorney can be sued for moneys collected by him for his client, there must be a demand of payment, or a failure to remit, after a reasonable time, in accordance with instructions. If the petition fail to allege such demand, it will be defective on motion in arrest of judgment.—Beardslee et al. v. Boyd et al., 180.

B

BAILMENTS.

1. *Railroads—Negligence.*—Carriers of passengers not being insurers of their safety, are not responsible where all reasonable care, skill and diligence, prudence and foresight, have been employed. They are not liable for mere accident, or misadventure, any more than for the act of God, or the public enemy, for any sudden convulsion of nature, or an unknown or unforeseen destruction, or an unknowable insufficiency of some part of the road. In addition to this, there must be some actual negligence, or want of strict care, diligence, and foresight.—Sawyer et al. v. Hannibal & St. Jos. R.R. Co., 240.
2. *Railroads—Negligence.*—In a suit by a passenger on a railroad train for injuries occasioned by the cars being thrown into a chasm, occasioned by the burning of a bridge by the public enemy, of which defect in the road the conductor of the train was prevented from receiving notice by the agents and servants of the road being driven off or overawed by the enemy,—an instruction confining the issue of negligence to the particular case in the running of the cars, and telling the jury that "if the train was conducted and managed with as much care and diligence as a very prudent and careful man would have conducted the same where his own interest and safety were concerned, taking into consideration all the circumstances surrounding the case, and that the injury complained of was the result of mere accident, then the carrier was not liable for the injury," was improp-

BAILMENTS *(Continued)*.

erly refused, as it presented to the jury the principle that the defendant was not to be held liable for mere accident, in the absence of any want of that degree of care and prudence which the law requires. If it were not the negligence of the conductor of the train, or his want of care and foresight, that was the proximate or remote cause of the accident and injury, the carrier was not liable.—*Id.*

3. *Damages.*—The owner of a slave may recover damages of a bailee, for an injury done to the slave by an inhuman and cruel beating, in consequence of which the slave returned to his master before the time for which he had been hired had expired.—Peters v. Clause, 337.

4. *Carriers.*—Telegraph companies, whether regarded as common carriers or bailees, may specially limit their liabilities, subject to the qualification that they will not be protected from the consequences of gross carelessness. A telegraph company may reasonably require that, for the purpose of avoiding errors, the message shall be repeated, or that the company shall not be liable for any error in the transmission of the message.—Wann v. Western Union Tel. Co., 472.

5. *Carriers — Negligence — Damages.*— Carriers of passengers are not insurers, but they are bound to the utmost care and skill in the performance of their duty. If the carrier be guilty of negligence which mediately or immediately produced the injury, and the party injured was not guilty of any negligence, carelessness, or imprudence, which directly contributed to the injury, the carrier will be liable.—Huelsenkamp v. Citizens' Railway Co., 537.

BANKING, ILLEGAL.

1. *Notes.*—A note given to secure a loan made in foreign bank notes by a foreign corporation doing business by its agent in this State, is void, and notes given in renewal of such original note are also void.—Bank of Louisville v. Young, 398.

BILLS OF EXCHANGE AND NEGOTIABLE NOTES.

1. *Presentment.*—To bind the endorser of a negotiable note, a presentment at the place of business of the maker, and a demand there made, is sufficient. —Bateson v. Clark et als., 31.

2. *Practice—Pleading.*—In a suit against the endorser, it is sufficient to set out the note according to its legal effect, and to allege that is was negotiable. It is not necessary to set out the note *in hæc verba.*—(See Jaccard v. Anderson, 32 Mo. 188; Lindsay v. Parsons, 34 Mo. 422; Simmons v. Belt, 35 Mo. 461.)—*Id.*

3. *Acceptance.*—The holder of a bill of exchange is entitled to an absolute and unconditional acceptance according to the tenor of the bill, and may reject any other. If he rely upon a conditional acceptance, he must show affirmatively that the condition has been complied with.—Ford v. Angelrodt et al., 50.

4. *Waiver of Demand and Protest.*—A waiver of presentment and demand of payment of a negotiable note would imply and include a waiver of protest and of notice of non-payment, but a waiver of notice only would not be a waiver of demand. A "waiver of protest" would imply a waiver of presentment, demand, and notice. The waiver is a matter between the holder

BILLS AND NOTES *(Continued)*.

of the note and the endorser to be charged, and the agreement must be made between them.—Jaccard et al. v. Anderson, 91.

5. *Endorser — Waiver of Protest.* — An endorsement was made upon a negotiable note, before maturity, as follows: "I assign the within note to J. T. and hold myself responsible for the payment of the same; the said P. [maker] to have two years to pay the same, unless he prefers to pay sooner; interest on the same to be paid annually." *Held*, that the endorsement was a waiver of demand and notice, and that the endorser was bound for the payment of the note, without any attempt to collect the amount due from the maker.—Airey v. Pearson et als., 424.

6. *Consideration — Contract.* — In a suit by payee upon a note given for goods sold, the maker may show in a defence of failure of consideration, that the goods were not as described and warranted at the sale, or that they were worthless for the purposes for which they were sold.—Murphy et al. v. Gay, 535.

7. *Fraud—Evidence.*—It is a good defence to a note that it was obtained by fraud and misrepresentation. On a question of fraud, the evidence may embrace all the facts and circumstances which go to make up the transaction, disclose its true character, and explain the acts and intentions of the parties.—Smalley v. Hale, 102.

BONDS AND NOTES ASSIGNABLE.

1. *Assignor.*—A note payable in this State to A., or order, although not expressed to be for value received, imports a valuable consideration as between maker and payee, and as between payee and assignee. In a suit by the assignee against the assignor, the amount specified in the note is *prima facie* the amount for which the assignee is liable. Under our law there are three classes of notes: 1. Notes negotiable like inland bills of exchange, containing the words, "for value received, negotiable and payable, without defalcation"; 2. Notes payable to order, or bearer, or assigns, under the first section of the act relating to bonds, notes, &c. (R. C. 1855, p. 319); 3. Notes not drawn payable to order, or bearer, and containing no words of negotiability that can make them assignable under the statutes or otherwise than in equity.—Labadie's Exec'r v. Chouteau et als., 413.

C

CONFLICT OF LAWS.

1. *Husband and Wife—Domicil.*—Personal property is governed by the law of the domicil of the owner, and the law changes with the change of domicil. Where a wife, living in Kentucky with her husband, owned slaves, which, by the law of that State, were taken to be held as real estate, and were not subject to attachment or levy under execution for any debts of the husband, yet upon the removal of the parties to this State, bringing the slaves with them, the rights of the husband over the slaves will be determined by the laws of this State.—Minor et als. v. Cardwell et als., 350.

2. *Lex Loci.* — A note although made in another State, yet payable in this State, is to be governed by the laws of this State. — Labadie's Exec'r v. Chouteau et als., 413.

CONFLICT OF LAWS (*Continued*).

3. *Interest.*—A corporation, created by the laws of another State, although forbidden by its charter to take more than six per centum interest, may, upon loans made in this State, charge the rate of interest allowed by our laws. The law of the place where the contract is to be performed will govern the rate of interest. One State will not enforce the usury laws of another State, in respect to contracts made within its own limits.—Bank of Louisville v. Young, 398.

CONTRACTS.

1. *Note—Fraud—Evidence.*—It is a good defence to a note that it was obtained by fraud and misrepresentation. On a question of fraud, the evidence may embrace all the facts and circumstances which go to make up the transaction, disclose its true character, and explain the acts and intentions of the parties.—Smalley v. Hale, 102.
2. *Evidence.*—Where a contract for the grading of a railroad stipulated the price to be paid for the excavation and embankment of earth, including all materials except hard-pan, but fixed no prices for other kinds of excavation, upon a suit to recover the value of work done in excavating indurated earth, the plaintiff may show by evidence that the words "earth excavation" did not include indurated earth, for the purpose of showing that the price to be paid for such excavation was not fixed by the contract.—Blair v. Corby, 313.
3. *Fraud—Payment.*—Where a party sells land and takes in payment certificates of stock of an incorporated company, in the absence of any fraud or misrepresentation, he cannot recover for the price of the land because the stock subsequently turns out to be valueless.—O'Donoghue v. Jones, 371.
4. See CONFLICT OF LAWS, 3.
5. *Note—Consideration.*—In a suit by payee upon a note given for goods sold, the maker may show in a defence of failure of consideration, that the goods were not as described and warranted at the sale, or that they were worthless for the purposes for which they were sold.—Murphy et al. v. Gay, 535.
6. *Municipal Corporations.*—By an act of the General Assembly, commissioners were named and appointed to sign warrants to be issued by the City of St. Louis in payment of debts due by the city. *Held*, that there was no contract between the city and the commissioners that the city should pay them for their services, and that they could not recover.—Garnier v. City of St. Louis, 554.
7. *Performance—Action.*—Where a party enters into a contract for the sale and delivery of property at a stipulated price, the contract being entire, a full performance on his part is a condition precedent to a right of action for the price of any part of the property delivered.—Bersch, Assignee, v. Sander, 104.

CONSTITUTION.

1. *City of St. Louis—Evidence.*—The act of the General Assembly of January 16, 1860, § 2, which authorized the City of St. Louis to assess the cost of macadamizing streets against the owners of the property fronting upon such streets, and providing that the certificate of the city engineer shall be *prima facie* evidence of the validity of the charge against the property, and of the

CONSTITUTION *(Continued)*.

liability of the party therein named as owner, is constitutional. The Legislature has power to provide a summary mode of collecting such taxes, and may declare what evidence shall be sufficient to show a *prima facie* case for the plaintiff.—City of St. Louis to use, &c., v. Coons, 44.

2. *Railroads — Ordinance.* — The ordinance of the Convention adopted April 8, 1865, does not suspend the right and power of the General Assembly to provide by law for a sale of the railroads, or either of them, until there is a refusal or neglect to pay the tax required to be imposed by the ordinance. —Answer to Governor, Nov. 27, 1865, p. 129.

3. *Railroads—Sale.*—No such sale can be made without reserving a lien upon all the property and franchises sold, for all sums remaining unpaid by the purchaser.—*Id.*

4. *Railroads — Stock.*—When a railroad shall be sold under the ordinance of April 8, 1865, the State cannot receive in payment shares of stock to be issued by the corporation purchasing such railroad. (Const. Art. XI., sec. 13.)—*Id.*

5. *Judicial Power, extent of, under Const., Art. VI., sec.* 11.—The Judges of the Supreme Court must determine what are questions of "Constitutional law," and what are "solemn occasions," within the meaning of sec. 11, Art. VI. of the new Constitution, upon which they must give their opinions. The questions to be answered must be questions of law only involving the construction or meaning of some part of the Constitution; and must be in their own nature judicial questions, the final determination of which belongs to the Judicial Department.—Answer to Senate, Dec. 9, 1865, p. 135.

6. *Departments.* — The Executive and Legislative departments of the Government are, in the first instance, the proper judges of the extent of their own constitutional powers and duties.—*Id.*

7. *North Missouri Railroad — Lien.*—The General Assembly had, at the time of the passage of the act of February 16, 1865, (Laws of 1865, p. 90,) the constitutional power to relinquish and release the first mortgage lien upon the franchises and property of the North Missouri Railroad as provided in said act.—Answer to Governor, Jan. 22, 1866, p. 139.

8. *Officers — Revenue.*—The sheriff is, by virtue of his office as sheriff, collector of the State and county taxes; the two offices are one and inseparable. The ordinance of the Convention, passed March 17, 1865, vacating the offices of sheriffs, &c., on May 1, 1865, deprived the sheriffs of all authority as collectors of the revenue. The offices were vacated altogether.—Price v. Adamson, 145.

9. *Practice—Jury.*—In trials at common law in courts of record, the parties are entitled to a jury of twelve men as a matter of constitutional right, and any consent to waive this right must be entered of record. If such consent do not appear of record, the party may avail himself of the objection by motion in arrest of judgment.—Brown v. Hann. & St. Jo. R.R. Co., 298.

CONVEYANCES.

1. *Revenue — Lands.* — Under the Revenue Act of November 23, 1857, § 33, the deeds executed by the Register are *prima facie* evidence of title in the purchaser only when duly executed and recorded. A deed is not duly executed unless it be proved or acknowledged in the manner provided by

CONVEYANCES *(Continued)*.

the "Act relating to conveyances"—R. C. 1855, p. 364. Without being proved or acknowledged, the deeds cannot be recorded.—Stierlein v. Daley et als., 483.

2. See CORPORATIONS, MUNICIPAL, 2, 4.

CORPORATIONS, MUNICIPAL.

1. *Constitution—City of St. Louis—Evidence.*—The act of the General Assembly of January 16, 1860, § 2, which authorized the City of St. Louis to assess the cost of macadamizing streets against the owners of the property fronting upon such streets, and providing that the certificate of the city engineer shall be *prima facie* evidence of the validity of the charge against the property, and of the liability of the party therein named as owner, is constitutional. The Legislature has power to provide a summary mode of collecting such taxes, and may declare what evidence shall be sufficient to show a *prima facie* case for the plaintiff.—City of St. Louis to use of Lohrum v. Coons, 44.

2. *Revenue—City of St. Louis—Conveyances.*—A tax deed, made upon a sale of lands by the City of St. Louis for unpaid taxes, must show a strict compliance with the statute. (Acts 1857, p. 99, § 43.) All such statutes, authorizing proceedings which are to have the effect of divesting a citizen of his title to real estate, must be strictly construed and strictly pursued.—Stierlein v. Daley et als., 483.

3. See CONTRACTS, 6.

4. *Revenue—Special Tax—Sale—Lands.*—The charter of the City of St. Joseph, approved Nov. 21, 1857, authorized the mayor and councilmen to provide for the improvement of the streets, alleys, &c., and that the cost should be borne by the owners of the adjoining property, and be apportioned and charged on the adjoining lots in proportion to their fronts, in such manner as should be prescribed by ordinance. The charter further provided that the assessments made to pay for such improvements should be a lien upon the lots of the adjoining owners, and that the owners should be liable to an action as upon like liabilities contracted by themselves; and also that the lien might be enforced by a special tax, levy and sale, as well as by proceedings at law, in such manner as might be prescribed by ordinance. By ordinance of Feb. 4, 1858, the city provided for the improvement of a street in front of several lots owned by plaintiff, and directed that if the bills for such improvements were not paid within ten days after demand by the collector they should bear interest at twenty per cent., and should be placed in the hands of the city attorney to be collected by proceedings at law. Subsequent to the improvement of the street in front of defendant's property, the city passed an ordinance amending that of Feb. 4, 1858, providing that the cost of such improvements should be enforced by a special tax, a levy, and sale. Under this amendatory ordinance, the city proceeded to levy upon the lots of the plaintiff and advertised them for sale in gross, without instituting any proceedings at law to enforce the lien. Upon a bill filed to enjoin the defendant from making such sale—*Held*, 1. That, as the action of the defendant tended to throw a cloud upon the title of the defendant, a bill for an injunction was a proper remedy. 2. That the proceeding

CORPORATIONS, MUNICIPAL *(Continued)*.

to enforce collection of the cost of the improvements under the amendatory ordinance by a levy and sale was void, as the ordinance was retrospective in its operations, the work having been done under the ordinance which provided for the collection of the bills by a suit at law. 3. That the cost of the improvements should be charged to each several lot according to its front, and not to several lots in gross. 4. That where a party sets up a pretension to sell the land of another in such a manner as will work a divestiture of title, without judgment or judicial process, it will devolve upon him to show that he has strictly pursued the power conferring the right.—That no liberal or equitable construction can be permitted in such a case, nor any presumptions be allowed where the inevitable effect would be to deprive the citizen of his property without invoking the law of the land or the judgment of his peers.—Fowler v. City of St. Joseph, 228.

CORPORATIONS, RAILROAD.

1. *Constitution—Ordinance*.—The ordinance of the Convention adopted April 8, 1865, does not suspend the right and power of the General Assembly to provide by law for a sale of the railroads, or either of them, until there is a refusal or neglect to pay the tax required to be imposed by the ordinance.—Answer to Governor, 129.
2. *Constitution—Sale*.—No such sale can be made without reserving a lien upon all the property and franchises sold, for all sums remaining unpaid by the purchaser.—*Id.*
3. *Constitution—Stock*.—When a railroad shall be sold under the ordinance of April 8, 1865, the State cannot receive in payment shares of stock to be issued by the corporation purchasing such railroad. (Const. art. 11., sec. 13.)—*Id.*
4. *Constitution—North Missouri Railroad—Lien*.—The General Assembly had, at the time of the passage of the act of February 16, 1865, (Laws of 1865, p. 90,) the constitutional power to relinquish and release the first mortgage lien upon the franchises and property of the North Missouri Railroad as provided in said act.—Answer to Governor, 139.
5. See BAILMENTS, 1, 2, 5.
6. *Revenue — Corporations*.—The lands granted by the State to the Hannibal and St. Joseph Railroad Company by the act of Sept. 20, 1852, are not taxable for State and county purposes under the general revenue law. (Laws 1863–4, p. 65.) The property of the company is represented by its shares of stock, and there cannot be any other property over and above the stock held by the stockholders. (See Hann. & St. Jo. R.R. Co. v. Shacklett, 30 Mo. 550.)—State v. Hann. & St. Jo. R.R. Co., 265.
7. *Negligence—Damages*.—In an action for damages against a railroad, for negligently managing its engines, so that fire was communicated to the standing grass and crops of the plaintiff, the burden of proof is upon the plaintiff, to show that the fire was caused by the negligence or want of care of the defendant. There is no legal presumption of negligence in such cases; it must be shown as a matter of fact.—Smith v. Han. & St. Jo. R.R. Co., 287.
8. *Public Lands*.—The acts of Congress of June 10, 1852, and February 9, 1853, and the act of the General Assembly of September 20, 1852, amount-

CORPORATIONS, RAILROAD (*Continued*).

ed to a legislative grant of the even numbered sections of land within six miles of the roads named in said acts, as soon as the lands were designated by a definite location of the route of said railroads in the manner provided in said acts. It was not necessary that the maps, showing the definite location of the roads, should designate the particular sections which had been granted by the acts. The descriptive list of lands granted by the acts of Congress, certified by the Commissioner of the General Land Office, is presumptive evidence that the lands therein specified have been granted.—Hann. & St. Jo. R.R. Co. v. Moore, 338.

CORPORATIONS.

1. *Attachment—Stocks.*—Shares of stock in an incorporated company cannot be levied on by an attachment. The statute of this State has not changed the common law rule in such cases.—Foster v. Potter, 525.
2. *Executions—Stocks.*—Under the statute relating to executions—R. C. 1855, p. 742, §§ 23, 24—shares of stock in an incorporated company belonging to the defendant in the execution may be seized and sold by the sheriff in the manner provided in the act.—*Id.*
3. *Stocks—Mortgage—Execution.*—The equity of redemption of a judgment debtor in shares of stock may be levied upon and sold under execution, and the purchaser will succeed to all the rights of the debtor.—*Id.*
4. See CORPORATIONS, RAILROAD, 6.

CRIMES AND PUNISHMENTS.

1. *Receiving Stolen Goods—Criminal Practice.*—In an indictment charging the defendant with receiving stolen goods with a guilty knowledge, it is not necessary that the name of the person who stole the goods should be stated.—State v. Smith, 58.
2. *Criminal Practice—Receiving Stolen Goods.*—Where a defendant is charged with having received stolen goods jointly with others, he may be convicted if the evidence show that himself separately received the property.—*Id.*
3. *Malicious Trespass—Evidence.*—Upon the trial of an indictment for unlawfully and maliciously taking down and removing a house, evidence that the defendant removed the house at the request of one who occupied and had apparent control of the premises is admissible to rebut the malicious intent. (R. C. 1855, p. 584.)—State v. Underwood, 225.
4. *Malicious Trespass.*—Although the defendant may have taken down and moved a dwelling-house without authority, a malicious intent must be proven, and is not to be presumed from the want of authority.—*Id.*
5. *Criminal Practice—Indictment.*—(R. C. 1855, p. 567, § 39.) Indictment charging defendant with feloniously assaulting another with a deadly weapon, and feloniously wounding, &c., is good.—State v. Ray, 365.
6. *Larceny.*—The stealing of several articles of property at the same time and place, although belonging to several persons, constitutes but one offence.—State v. Morphin, 373.
7. *Larceny.*—Larceny is the wrongful or fraudulent taking and carrying away of the personal property of another, from any place, with a felonious intent to convert the same to the taker's use, and make it his own, without consent of the owner.—State v. Gray, 463.

CRIMES AND PUNISHMENTS *(Continued)*.

8. *Murder.*—If the killing be done of preconceived anger and malice, although in mutual combat, it will be deliberate and premeditated murder.—State v. Green, 466.

D

DAMAGES.

See BAILMENTS, 3, 5. CORPORATIONS, RAILROAD, 7.

Trespass—Attachments.—Where several attachments are successively levied upon goods not the property of the attachment debtor, the attachment creditors are not joint trespassers, and are not liable to contribution as such (R. C. 1855, p. 649); but were several creditors, thus attaching, were sued as joint trespassers, and judgment recovered, the judgment is conclusive as to their liability to contribution.—Brewster et als. v. Gauss et al., 518.

DEPOSITIONS.

Evidence.—A copy of the testimony given by a deceased witness, upon the taking of his deposition, although signed by the witness himself, is not admissible in evidence when no notice was given of the taking of the deposition, nor opportunity allowed for cross-examination.—Perry et al. v. Siter et als., 273.

E

ELECTIONS.

1. *Majority.*—Where a proposition to issue bonds was submitted to a two thirds vote of the qualified voters of a city, it is sufficient if two thirds of the qualified voters who voted at the special election, voted in favor of the proposition.—State ex rel. Bassett v. Mayor of St. Joseph, 270.
2. *Practice—Pleading.*—A petition in a suit against the judges of an election precinct for wrongfully refusing the plaintiff's vote, must set out the facts which give the plaintiff a cause of action, and show how he was entitled to vote, by stating the qualifications which gave him the right.—Curry v. Cabliss et als., 330.

EQUITY.

1. *Vendors and Purchasers—Equity.*—A purchaser of land with notice of the equities of a prior purchaser, takes the land subject to such equities.—Gibson v. Lair et al., 188.
2. *Injunction—New Trial.*—A party who has failed to make his defence to a suit at law, and seeking the interposition of a court of equity, must show some substantial ground of relief which will bring the case under some head of equitable jurisdiction; such as fraud of the opposite party, uncontrollable accident, or mistake, unmixed with negligence or fault on his part. (Matson v. Field, 10 Mo. 100.)—Reed's Adm'r et al. v. Hansard, 199.
3. *Nuisance—Injunction.*—Equity will interfere by injunction in case of a direct, continuing, and permanent nuisance, without compelling the plaintiff to resort to repeated actions at law. To authorize this interference, there must be such an injury as from its nature is not susceptible of an adequate compensation by damages at law, or such as from its continuance must occasion a constantly recurring grievance, which cannot otherwise be prevented but by injunction. It is only necessary that a party

EQUITY *(Continued)*.

should establish his right in an action at law preparatory to obtaining an injunction, where a question of title is involved, or the right itself is doubtful or uncertain. A purchaser of land may have his action for the continuance of a nuisance erected before his purchase was made. The keeping and standing of jacks and stallions within the immediate view of a private dwelling is a nuisance.—Hayden v. Tucker, 214.

4. See CORPORATION, MUNICIPAL, 4.

5. *Note—Injunction.*—A court of equity will enjoin the collection of a judgment recovered upon a note over-due by parties to whom it has been endorsed for collection only, and who thus hold the legal title, in favor of the maker who has paid or settled the amount due upon the note with the beneficial owners thereof, even as against an assignee of the suit. The assignee is bound to make inquiry into the title of his assignors.—Perry et al. v. Siter et als., 273.

6. *Mistake—Parties.*—In a bill in equity, brought by the purchaser of land sold under a power given by a mortgage, to correct a mistake in the mortgage deed, the mortgagee is a necessary party.—Haley v. Bagley, 368.

7. *Mortgage—Vendors and Purchasers.*—A purchaser buying at a sale made by virtue of a power contained in a mortgage, buys at his peril.—*Id.*

8. *Trustee—Agent.*—A. being indebted to B. by note, as security for its payment transferred to B. a note of C.'s for a larger amount, secured by a deed of trust upon land, and the deed of trust itself. The note of C. not being paid, B. had the land sold by the trustee, and purchased at the trustee's sale. This land B. subsequently sold for an amount more than sufficient to pay the note of A. *Held*, that, in collecting the collateral note, B. was acting as the agent of A., and was subject to all rights and disabilities incident to that character, and could not, under the circumstances, speculate for his private gain, to the prejudice of his principal.—Boardman v. Florez, 559.

9. *Mistake.*—A party seeking to correct a contract upon the ground of mistake of fact, must show in his petition how he is injured by such mistake. —Stoddard v. Murdock, 580.

10. *Jurisdiction.*—Where a court of equity acquires jurisdiction of the subject matter, it will proceed to do complete justice between the parties.—McDaniel et al. v. Lee et al., 204.

11. *Vendors and Purchasers—Title.*—A vendor may enforce a specific performance of a contract for the sale of lands, if he can show a good title at the time of trial or decree.—Luckett v. Williamson, 388.

12. See MORTGAGES, 1. USES AND TRUSTS, 1.

ERROR.

See PRACTICE CIVIL and PRACTICE CRIMINAL.

ESTOPPEL.

1. *Highways—Dedication.*—To constitute a dedication of private property to public use, at common law, there must be, 1st, a plain and unequivocal intention on the part of the owner to appropriate the property for public use, and, 2d, there must be an acceptance by user or otherwise on the part of

ESTOPPEL *(Continued)*.

the public. In a dedication under the statute, by making and filing a plat, no acceptance by the public need be shown. Although as against his grantees the owner of land may be estopped from denying the fact of dedication, where he has granted lands calling for a street or a highway as a boundary, yet as against the public neither he nor his grantees are estopped until acceptance and user be shown.—Becker v. City of St. Charles et als., 13.

2. *Attachment—Record.*—A judgment against a garnishee summoned in an attachment suit is conclusive only upon parties to the suit, and does not affect strangers to the record. (Funkhouser v. How, 24 Mo. 44.)—Dobbins et al. v. Hyde et al., 114.

3. *Estoppel in pais.*—To constitute en estoppel *in pais*, there must be an admission inconsistent with the claim set up; an action by the other party upon such admission, and an injury resulting to him by allowing such admission, to be disproved.—Newman v. Hook, 207.

4. *Judgment—Practice.*—If a judgment be erroneous or irregular, it must be reversed or vacated in a direct proceeding instituted for that purpose. In a suit upon the judgment, its conformity to law cannot be inquired into.—Martin et al. v. Barron, 301.

5. *Judgment—Evidence.*—A conviction for an offence, also punishable by the laws of the State, by virtue of the ordinances of a municipal corporation authorized by its charter to punish similar offences, is a bar to a subsequent prosecution by the State. Where the record of the conviction under the ordinances of such corporation does not show conclusively the identical offence of which the party was convicted, parol evidence is admissible to show the identity of the offence.—State v. Thornton, 360.

6. *Judgment.*—A party who has recovered personal property by judgment in a suit in replevin, cannot be sued in trespass by the defendant for the wrongful taking of the same property.—Ewald v. Waterhont, 602.

7. *Highways—Dedication.*—To constitute a dedication of a highway by the making of a plat, the plat must be acknowledged and recorded in the manner provided for town plats—R. C. 1855, p. 1535. To constitute a dedication by user, there must be an intention to dedicate on the part of the owner, with such acceptance or user by the public, for such a length of time, that the public accommodation or private rights would be materially affected by an interruption of the enjoyment, though for less than twenty years.—Putnam v. Walker, 600.

EVIDENCE.

1. *Hearsay.*—The testimony of a deceased witness at a former trial of a case is admissible in evidence if the same issues are presented, and his testimony was directed to the issues, thus giving an opportunity for cross-examination.—Jaccard et als. v. Anderson, 91.

2. *Hearsay.*—The declarations of one who is a competent witness at the trial are not admissible in evidence.—Howell's Exec'r v. Howell, 124.

3. *Crimes—Malicious Trespass.*—Upon the trial of an indictment for unlawfully and maliciously taking down and removing a house, evidence that the defendant removed the house at the request of one who occupied and had ap-

EVIDENCE (*Continued*).

parent control of the premises is admissible to rebut the malicious intent. (R. C. 1855, p. 584.)—State v. Underwood, 225.

4. *Deposition.*—A copy of the testimony given by a deceased witness, upon the taking of his deposition, although signed by the witness himself, is not admissible in evidence when no notice was given of the taking of the deposition, nor opportunity allowed for cross-examination.—Perry et al. v. Siter et als., 273.

5. *Estoppel—Judgment.*—A conviction for an offence, also punishable by the laws of the State, by virtue of the ordinances of a municipal corporation authorized by its charter to punish similar offences, is a bar to a subsequent prosecution by the State. Where the record of the conviction under the ordinances of such corporation does not show conclusively the identical offence of which the party was convicted, parol evidence is admissible to show the identity of the offence.—State v. Thornton, 360.

6. See CONTRACTS, 2.

7. *Payment—Receipt.*—A receipt to be evidence of payment must be in the possession of the party purporting to have paid the money; while in the possession of the creditor it is no evidence of payment by the debtor.—Nelson v. Boland, 432.

8. *Crimes—Larceny.*—The possession of stolen property recently after its loss, is presumptive evidence of guilty possession, and if unexplained by attending circumstances, or the character of the possessor or otherwise, is taken as conclusive.—State v. Gray, 463.

9. *Names.*—Where the spelling of a foreign name does not materially vary the sound, as Doerges for Dierkes, in the German language, it is not a misnomer.—Gorman v. Dierkes, 576.

10. *Criminal Practice—Receiving Stolen Goods.*—Upon an indictment for receiving stolen goods, knowing them to have been stolen, the State must prove that the property was stolen and that the defendant received the property knowing it to have been stolen; and all the acts which go to prove the fact of the stealing are properly admissible in evidence as part of the *res gestæ*. —State v. Smith, 58.

EXECUTIONS.

1. *Lands.*—Under the provisions of the act relating to executions (R. C. 1855, p. 746, § 46), the plaintiff in the execution is required to give notice to the defendant of the issue of the writ, &c., only in cases where the execution is sent to be levied on land situate in a county different from that in which the judgment was rendered and the execution issued.—Harris v. Chouteau et al., 165.

2. *Levy—Sale—Lands.*—The levying of an execution upon lands after the return day of the writ, and a sale made upon such levy, are void acts, and the purchaser takes no title; but when the levy is made during the life of the writ, the sale may be made after its return day. (R. C. 1855, p. 748; Acts 1863, p. 20, § 2.)—Bank of the State of Mo. v. Bray et al., 194.

3. *Levy—Sale.*—To pass title to personal property by a levy and sale under execution, the sheriff must actually seize the property so as to deliver the possession.—Newman v. Hook, 207.

EXECUTIONS (*Continued*).

4. *Corporations—Stocks.*—Under the statute relating to executions—R. C. 1855, p. 742, §§ 23, 24—shares of stock in an incorporated company belonging to the defendant in the execution may be seized and sold by the sheriff in the manner provided in the act.—Foster v. Potter, 525.
5. *Corporations—Stocks—Mortgage.*—The equity of redemption of a judgment debtor in shares of stock may be levied upon and sold under execution, and the purcharer will succeed to all the rights of the debtor.—*Id.*
6. *Lands.*—A judgment creditor purchasing the land of the execution debtor upon a sale made under execution issued upon a judgment satisfied, takes no title. The sale upon a satisfied judgment is absolutely void as to purchasers with notice.—Weston v. Clark, 568.

F

FORCIBLE ENTRY AND DETAINER.

See JUSTICES' COURTS.

1. *Unlawful Detainer—Landlord and Tenant.*—The time of the service of the notice of the demand for possession of the premises is the time of the demand. Where the premises are let for a fixed period of time, no demand of possession is necessary to authorize the bringing of an action for the unlawful detainer.—Alexander et al. v. Westcott, 108.
2. *Unlawful Detainer—Complaint.*—A complaint in unlawful detainer, alleging that the plaintiffs were the owners and entitled to the possession of the premises; that they leased the premises to defendant for one year from a given date, and that defendant wilfully continued to hold and does hold over the possession after the expiration of the time the premises were demised, is sufficient.—*Id.*

FRAUD.

See BILLS OF EXCHANGE, 7. CONTRACTS, 3.

FRAUDS, STATUTE OF.

Vendors and Purchasers.—A purchaser may insist upon the defence of the statute of frauds, although he confess the parol agreement. (R. C. 1855, p. 1238, § 47.) A part performance, by the vendee, of a parol contract for the sale of lands will not avail the vendor.—Luckett v. Williamson, 388.

FRAUDULENT CONVEYANCES.

1. *Assignments.*—In general, a party may assign his property as he pleases; but where there are numerous creditors, he cannot use an assignment as a means of preserving his property from the lawful actions and demands of his creditors. An assignment made with intent to delay, hinder or defraud creditors, is fraudulent. Where such intent appears upon the face of the instrument, it will be declared void, as a matter of law. The essence of the fraud consists in the fact, that the deed is not made in good faith for the payment of honest debts, but for the advantage of the grantor, and for the purpose of postponing and defeating the just claims of creditors.—State to use, &c., v. Benoist et als., 500.
2. *Assignments—Preferences.*—An assignor may make preferences, by making a partial assignment for the benefit of particular creditors, but in so doing

FRAUDULENT CONVEYANCES *(Continued)*.

the assignment must be made for the genuine purpose of paying honest debts, and not for the use and benefit of the grantor, nor to hinder, delay and defraud other creditors.—*Id.*

G

GENERAL ASSEMBLY.

Compensation — Auditor.—The members of the General Assembly are entitled to pay only for the days they serve; and where, by a concurrent resolution of the Senate and House of Representatives, both Houses took a recess or adjourned for several days, the members are not entitled to pay during such recess. The Auditor may inquire into the legality of the Speaker's warrant.—State ex rel. McMurtry v. Auditor, 176.

GUARDIAN AND WARD.

Partition.—Infants interested in lands may join as parties plaintiff, by their curator, in seeking a partition; and when all the owners of the land agree, they may all join as plaintiffs in seeking a partition *ex parte*. (Thornton v. Thornton, 27 Mo. 303, and Waugh v. Blumenthal, 28 Mo. 462, approved.)—Larned v. Whitehill, S. P., affirmed.—Larned & wife v. Renshaw, 458.

H

HIGHWAYS.

1. *Dedication—Estoppel.*—To constitute a dedication of private property to public use, at common law, there must be, 1st, a plain and unequivocal intention on the part of the owner to appropriate the property for public use, and, 2d, there must an acceptance by user or otherwise on the part of the public. In a dedication under the statute, by making and filing a plat, no acceptance by the public need be shown. Although as against his grantees the owner of land may be estopped from denying the fact of dedication, where he has granted lands calling for a street or a highway as a boundary, yet as against the public neither he nor his grantees are estopped until acceptance and user be shown.—Becker v. City of St. Charles et al., 13.
2. *Dedication.*—To constitute a dedication of a highway by the making of a plat, the plat must be acknowledged and recorded in the manner provided for town plats—R. C. 1855, p. 1535. To constitute a dedication by user, there must be an intention to dedicate on the part of the owner, with such acceptance or user by the public, for such a length of time, that the public accommodation or private rights would be materially affected by an interruption of the enjoyment, though for less than twenty years.—Putnam v. Walker, 600.

HUSBAND AND WIFE.

1. *Conflict of Laws—Domicil.*—Personal property is governed by the laws of the domicil of the owner, and the law changes with the change of domicil. Where a wife, living in Kentucky with her husband, owned slaves, which, by the law of that State, were taken to be held as real estate, and were not subject to attachment or levy under execution for any debts of the husband, yet upon the removal of the parties to this State, bringing the slaves with them, the rights of the husband over the slaves will be determined by the laws of this State.—Minor et als. v. Cardwell, 350.

I

INJUNCTION.

See EQUITY, 2, 3, 5. CORPORATIONS, MUNICIPAL, 4.

INSURANCE.

1. *Policy—Deviation—Warranty.*—A time policy was issued upon a steamboat, which excepted the navigation of certain waters. After the issue of the policy, the boat made a trip upon the forbidden waters, and returned safely to port, and while in port was subsequently destroyed by fire. *Held*, that by the terms of the policy the insurance of the boat, while navigating the permitted waters, did not constitute a warranty, but only an exception to the perils insured against, and that the insurers were liable upon their policy.—Greenleaf et als. v. St. Louis Ins. Co., 25.
2. *Cause of Loss.*—A policy of insurance upon a building is an insurance upon the building as such, and not upon the materials of which it is composed. If from any defect of construction or overloading the building fall into ruins, and subsequently the materials take fire, the insurer is not liable for the loss.—Nave et al. v. Home Mut. Ins. Co., 430.—

J

JUDGMENT.

1. *Attachment—Record.*—A judgment against a garnishee summoned in an attachment suit is conclusive only upon parties to the suit, and does not affect strangers to the record. (Funkhouser v. How, 24 Mo. 44.)—Dobbins et al. v. Hyde et al., 114.
2. *Estoppel—Practice.*—If a judgment be erroneous or irregular, it must be reversed or vacated in a direct proceeding instituted for that purpose. In a suit upon the judgment, its conformity to law cannot be inquired into.—Martin et al. v. Barron, 301.
3. *Estoppel—Evidence.*—A conviction for an offence, also punishable by the laws of the State, by virtue of the ordinances of a municipal corporation authorized by its charter to punish similar offences, is a bar to a subsequent prosecution by the State. Where the record of the conviction under the ordinances of such corporation does not show conclusively the identical offence of which the party was convicted, parol evidence is admissible to show the identity of the offence.—State v. Thornton, 360.
4. *Estoppel.*—A party who has recovered personal property by judgment in a suit in replevin, cannot be sued in trespass by the defendant for the wrongful taking of the same property.—Ewald v. Waterhont, 602.
5. *Securities.*—One of several securities against whom judgment has been recovered, cannot, upon paying the debt to the creditor, take an assignment of the judgment to himself and enforce payment thereof by execution against the property of his co-sureties.—McDaniel et al. v. Lee et al., 204.
6. *Process.*—Where process has been served upon a defendant, and judgment by default entered, the court cannot at a subsequent term, upon the mere suggestion of defendant, set aside the judgment upon the ground of defective service of process.—Bank of the State of Mo. v. Bray et al., 194.
7. See EQUITY, 2, 5.
8. *Practice—Equity.*—A settlement with a county court is equivalent to a judgment rendered by a court of competent jurisdiction, and will be set aside

JUDGMENT *(Continued)*.

only when impeached for fraud, by a proceeding in the nature of a bill in equity.—Sullivan County v. Burgess, 300.

9. *Justices' Courts — Limitations.*—Judgments rendered in a justice's court are not barred by the statute of limitations. (R. C. 1855, p. 1053, § 16.)—Humphreys v. Lundy, 320.

10. *Justices' Courts—Scire Facias.*—A *scire facias*, under the provisions of the statute (R. C. 1855, p. 951, §§ 7-9) to revive a justice's judgment, may issue after a lapse of ten years. The provisions of the act relating to judgments, (R. C. 1855, p. 902,) apply only to judgments of courts of record. —*Id.*

11. *Practice—Scire Facias—Justices' Courts.*—A *scire facias* to revive a judgment is not a suit upon the judgment, in which the plaintiff recovers the amount of the original judgment, with interest and costs. The proper entry, is to award execution for the amount of the original judgment, with interest from its rendition, and costs.—*Id.*

12. *Satisfaction.*—A judgment against several debtors, entered satisfied so as to discharge the lien as to one of the defendants, is satisfied as to all.—Weston v. Clark, 568.

JURISDICTION.

See EQUITY. PRACTICE, CIVIL. CONSTITUTION.

1. *Courts.*—By the act of February 18, 1859 (Laws 1859, p. 487, § 4), repealed by act of January 24, 1864, (Laws 1863-4, p. 307,) the St. Louis Circuit and Common Pleas Courts had concurrent jurisdiction with the St. Louis Land Court in all suits relating to lands, except those for the direct recovery of the possession of real estate.—City of St. Louis to use, &c., v. Coons, 44.

2. *Courts.*— The Law Commissioner's Court of St. Louis county has no jurisdiction in actions to enforce liens against real estate. (City to use, &c., v. Rudolph, 36 Mo. 465.)—City of St. Louis to use, &c., v. Boyce et al., 429.

JURORS.

1. *Practice—Constitution.*—In trials at common law in courts of record, the parties are entitled to a jury of twelve men as a matter of constitutional right, and any consent to waive this right must be entered of record. If such consent do not appear of record, the party may avail himself of the objection by motion in arrest of judgment.—Brown v. Hann. & St. Jo. R.R. Co., 298.

2. *Practice — Misbehavior.* — A traverse juror is not a competent witness to prove misbehavior in the jury. For a jury to make up the amount of the verdict by each juror naming a certain sum and then dividing the aggregate of the sums specified by the number of the jury, is an improper mode of making up the verdict, and is misbehavior on the part of the jury.—Sawyer et al. v. Hann. & St. Jo. R.R. Co., 240.

3. *Criminal Practice.* — Jurors must be impartial and wholly unprejudiced. Where a juror upon his *voir dire* had sworn that he had never formed or expressed an opinion as to the guilt or innocence of the prisoner, and after verdict of guilty, the defendant moved for a new trial, for the reason that the juror had before the trial declared that he believed the prisoner to be guilty, which fact the defendant only learned after verdict, and filing affidavit of

JURORS (*Continued*).

respectable witnesses testifying to such expression of opinion on the part of the juror, the court should set aide the verdict and grant a new trial.—State v. Burnside, 343.

JUSTICES' COURTS.

1. *Judgments — Limitations.*—Judgments rendered in a justice's court are not barred by the statute of limitations. (R. C. 1855, p. 1053, § 16.)—Humphreys v. Lundy, 320.
2. *Judgment—Scire Facias.*—A *scire facias*, under the provisions of the statute (R. C. 1855, p. 951, §§ 7-9), to revive a justice's judgment, may issue after a lapse of ten years. The provisions of the act relating to judgments, (R. C. 1855, p. 902,) apply only to judgments of courts of record.—*Id.*
3. *Judgments—Scire Facias.*—A *scire facias* to revive a judgment is not a suit upon the judgment, in which the plaintiff recovers the amount of the original judgment, with interest and costs. The proper entry, is to award execution for the amount of the original judgment, with interest from its rendition, and costs.—*Id.*
4. *Revenue—Stamps.*—The act of Congress does not require that a stamp shall be affixed to the certificate of a justice of the peace certifying an appeal to the Circuit Court. The appeal is not an original process under our statutes.—Norris v. Hann. & St. Jo. R.R. Co., 286.
5. *Appeals.*—When an appeal is taken from the judgment of a justice of the peace during the term of the Circuit Court, the transcript and papers must be filed in the Circuit Court within six days after the rendition of the judgment—R. C. 1855, p. 797, § 12.—Bernicker v. Miller, 498.

L

LANDLORD AND TENANT.

See FORCIBLE ENTRY AND DETAINER.

Lease—Assignment.—If a lessee makes a general assignment "of all his property whatsoever," or of "all his property of every sort and description," for the benefit of his creditors, the trustee becomes bound as assignee of the lease if he accept the assignment and enter under the lease. The question to be determined in such case is, whether the assignee accepted the premises as tenant of the lessor and as assignee of the interest of the lessee.—Boyce et al. v. Bakewell et als., 492.

LANDS AND LAND TITLES.

See CORPORATIONS, MUNICIPAL, 1, 2, 4. CONVEYANCES, 1. STATUTE OF FRAUDS, 1. GUARDIAN AND WARD, 1. ESTOPPEL, 1, 7. EXECUTIONS, 1, 2, 5.

1. *Revenue — Corporations.*—The lands granted by the State to the Hannibal and St. Joseph Railroad Company by the act of Sept. 20, 1852, are not taxable for State and county purposes under the general revenue law. (Laws 1863-4, p. 65.) The property of the company is represented by its shares of stock, and there cannot be any other property over and above the stock held by the stockholders. (See Hann. & St. Jo. R.R. Co. v. Shacklett, 30 Mo. 550.)—State v. Hann. & St. Jo. R.R. Co., 265.

LANDS AND LAND TITLES *(Continued)*.

2. *Railroads.*— The acts of Congress of June 10, 1852, and February 9th, 1853, and the act of the General Assembly of September 20, 1852, amounted to a legislative grant of the even numbered sections of land within six miles of the roads named in said acts, as soon as the lands were designated by a definite location of the route of said railroads in the manner provided in said acts. It was not necessary that the maps, showing the definite location of the roads, should designate the particular sections which had been granted by the acts. The descriptive list of lands granted by the acts of Congress, certified by the Commissioner of the General Land Office, is presumptive evidence that the lands therein specified have been granted.—Hann. & St. Jo. R.R. Co. v. Moore, 338.

3. *Pre-emption — Equity.* — Hill v. Miller, 36 Mo. 182, affirmed. — Stucker v. Duncan, 160.

4. *Confirmations.*—A confirmation of a lot by the Board of Commissioners in 1811, is a better title than a confirmation by the act of Congress of June 13, 1812, § 1, by virtue of inhabitation, cultivation and possession prior to December 20, 1803, as all prior confirmations were expressly excepted by said act of June 13, 1812.—Le Beau v. Gaven et als., 556.

LIMITATIONS.

1. *Justices' Courts—Judgments.*—Judgments rendered in a justice's court are not barred by the statute of limitations. (R. C. 1855, p. 1053, § 16.)—Humphreys v. Lundy, 320.

2. *Adverse Possession—Color of Title.*—A party entering into possession of land without color of title, can only prescribe for the land in his actual occupancy; if he claim under a tax deed, his possession will be under color of title only from the date of the deed.—De Graw v. Taylor, 310.

3. *Disabilities.*—The disability of coverture cannot be tacked upon that of infancy so as to make one continuing disability. Where two or more disabilities exist together at the time the cause of action accrues, the statute of limitations will not begin to run until the last one is removed; but where one exists when the cause of action accrues, the statute will begin to run when that expires, notwithstanding others arise in succession afterward.—Billon and wife v. Larimore et als., 375.

4. *Adverse Possession.*—A party entering into possession of land under claim of title, and exercising the usual acts of ownership over the whole tract described in the deeds under which he claims, for the period prescribed by the statute, thereby defeats the superior title by virtue of his adverse possession.—City of Carondelet v. Simon et al., 408.

5. *Payment.* — An allowance by a probate court of a demand against the estate of one of the makers of a promissory note which had become barred by the statute of limitations, and payments made upon such allowance by the administrator of the deceased maker will not deprive the other joint makers of such note of their defence of the bar of the statute. — Smith's Adm'r v. Irwin et al., 169.

M

MECHANICS' LIENS.

1. *Time.*—A sub-contractor's notice of lien given on the 15th February, and a lien filed on the 25th February, is given ten days before the filing of the lien, as required by the statute. The first day must be excluded, and the last included, in computing time within which an act is to be done—R. C. 1855, p. 1027, § 22.—Hahn et als. v. Dierkes et al., 574.
2. *Practice.*—A party seeking to enforce a mechanic's lien upon a building, must show that he furnished the materials for the building under a contract either with the owner of, or the contractor for, the building. (Hause v. Thompson, 36 Mo. 450.)—Hause v. Carroll, 578.
3. *St. Louis County.*—The special act relating to mechanics' liens in St. Louis county (Sess. Acts 1857, p. 671) is not in conflict with, and does not repeal, the provisions of the 10th section of the general statute upon the same subject (R. C. 1855, p. 1068), and the provisions of that section are applicable to liens in said county.—Deters v. Renick, 597.

MORTGAGES.

1. *Trust*—A. conveyed real and other property to B. and other creditors, to secure debts and liabilities, upon condition that if he paid the debts the deed should be void; but if he did not pay the same, then that B. should have power to sell the property at auction, and convey the same, upon such terms as a majority of the grantees might agree upon. The deed did not provide how the proceeds of sale should be disposed of. *Held*, that the deed must be treated as a mortgage, with a power of sale in B., and that the proceeds of sale must be distributed upon the trusts implied in the deed according to the equities of the parties, under the control of a court of equity. *Held also*, that B. had such an interest and title in the property, that, upon a seizure and levy upon the personal property by the sheriff upon an execution against A. in favor of an unsecured creditor, he might make claim for the same, and might sue upon the bond given by the execution creditor, and recover not only for his own interest but also for that of his co-grantees. *Held further*, that upon default of payment, in accordance with the terms of the deed, he might take and hold possession for himself and his co-mortgagees.—Steele to use of Milroy et al. v. Farber et als., 71.
2. *Emblements.*—Where the mortgagee enters upon the land and harvests the crops, thus converting them into personalty, he takes them as profits of the estate, to be accounted for to the mortgagor in the settlement of the debt. —*Id.*
3. *Securities.*—A surety may give to his co-sureties a mortgage to secure them against his liability for contribution.—*Id.*
4. *Equity—Mistake—Parties.*—In a bill in equity, brought by the purchaser of land sold under a power given by a mortgage, to correct a mistake in the mortgage deed, the mortgagee is a necessary party.—Haley v. Bagley, 363.
5. *Vendors and Purchasers.*—A purchaser buying at a sale made by virtue of a power contained in a mortgage, buys at his peril.—*Id.*

N

NUISANCE.

See EQUITY, 3.

O

OFFICERS.

See CONSTITUTION, 8. GENERAL ASSEMBLY, 1. REVENUE, 4.

Revenue — Action. — The securities upon the official bond of the sheriff are liable to an action for the wrongful act of the sheriff as collector of revenue in levying upon property to enforce the payment of taxes illegally assessed upon property not subject to taxation. (See Hann. & St. Jo. R.R. Co. v. Shacklett, 30 Mo. 550.) If the property be not subject to taxation, the collector is a trespasser if he levy the tax, in the same manner as an officer would be in enforcing the process of a court having no jurisdiction of the subject matter.—State to use, &c., v. Shacklett et al., 280.

P

PARTNERSHIP.

1. *Agreement.* — Parties cannot by any agreement as between themselves avoid the consequences of acts which constitute them partners as between themselves or as to third parties.—Meyer v. Field et als., 434.
2. *Dissolution.*—After the dissolution of a partnership by mutual consent, one partner cannot bind the other by any new contracts in the name of the firm, nor can he transfer the title to any of the partnership securities. Either party may reduce the choses in action to possession, and use them for paying the liabilities of the firm. If, after the dissolution, one of the partners die, his administrator may reduce choses in action to possession, and apply the proceeds to payment of the debts of the firm. — Mut. Sav. Inst. v. Enslin, 453.
3. *Note.*—A note given in the firm name with consent of all the partners, for the debt of one of the partners, is a partnership debt, and the firm is liable to the holder as principal debtor, and such note can be renewed by any of the partners.—Tilford v. Ramsey, 563.

PARTITION.

See GUARDIAN AND WARD, 1.

PAYMENT.

See EVIDENCE, 7.

1. *Contract—Tender.*—To make a tender of payment of money valid, as a general rule, the money must be actually produced and proffered unless the creditor expressly or impliedly waive its production. The creditor may not only waive the production of the money, but the actual possession of it in hand by the debtor. Nor is the debtor bound to count out the money if he has it and offers it, when the creditor refuses to receive it. A tender puts a stop to accruing damages or interest for delay in payment, and gives the defendant costs when sued for the debt.—Berthold et al. v. Reyburn et al., 586.
2. *Tender—Demand.*—A party making a tender of payment, must be always ready to pay the amount tendered. To avoid the plea of tender by a subsequent demand, the creditor must show a demand of the precise sum tendered. The demand must be made of the debtor personally.—*Id.*

POSSESSION.

See LIMITATIONS, 2, 4.

POSSESSION (*Continued*).

1. *Action — Strays.* — The possession of personal property which will authorize an action for its recovery must be a lawful possession. Where a party took up a stray, which he kept in his possession for a year without proceeding as a taker up of a stray animal under the statute R. C. 1855, p. 1506, he is to be treated as a trespasser *ab initio*, and cannot recover possession of the animal from a party into whose possession the animal may have again come as a stray.—Bayless v. Lefaivre, 119.

PRACTICE, CIVIL.

PARTIES.

1. *Equity—Mistake.*—In a bill in equity, brought by the purchaser of land sold under a power given by a mortgage, to correct a mistake in the mortgage deed, the mortgagee is a necessary party.—Haley v. Bagley, 363.

PLEADINGS.

2. *Negotiable Note.* — In a suit against the endorser, it is sufficient to set out the note according to its legal effect, and to allege that is was negotiable. It is not necessary to set out the note *in hæc verba*.—(See Jaccard v. Anderson, 32 Mo. 188; Lindsay v. Parsons, 34 Mo. 422; Simmons v. Belt, 35 Mo. 461.)—Bateson v. Clark et als., 31.

3. *Contract.*—An answer to a petition setting forth a contract and stating the particulars in which defendant failed to keep it, averring that the defendant had kept its terms and performed its conditions, although informal in not specifically denying the several allegations of the petition, presents issues to be tried, and does not admit the breaches alleged. Exceptions to such answer should be made before trial.—Loler v. Cool et al., 85.

4. *Written Instrument.*— Where suit is brought upon a written instrument which is not alleged to be lost or mislaid, if it be not filed with the petition, the defendant may, after answer, move to dismiss the suit (R. C. 1855, p. 1240-1, §§ 59-60.)—Rothwell v. Morgan. 107.

5. *Alien Enemy—Rebellion.*—A defendant in a suit brought or prosecuted by citizens residing in the States affected by the act of Congress of July 17, 1862, p. 590, "to suppress insurrection," &c., to avail himself as a defence of the disability created by that act, must allege the facts in his pleadings. —Dobbins et al. v. Hyde et al., 114.

6. *Answer.*—An answer may contain several different defences, but they must be consistent with each other, and must be separately stated. The defendant cannot in his answer deny, and then confess and avoid the cause of action.—Adams' Adm'r v. Trigg, 141.

7. *Attorneys—Demand.*—Before an attorney can be sued for moneys collected by him for his client, there must be a demand of payment, or a failure to remit, after a reasonable time, in accordance with instructions. If the petition fail to allege such demand, it will be defective on motion in arrest of judgment.—Beardslee et al. v. Boyd et al., 180.

8. *Demurrer.* — An instrument of writing sued upon, and filed with the petition, constitutes no part of the pleading, and cannot be considered in determining the sufficiency of the pleadings.—Baker v. Berry et al., 306.

PRACTICE, CIVIL (*Continued*).

9. *Variance—Judgment.*—A party cannot declare upon one cause of action, and recover judgment upon another and a different cause.—Harris v. Hann. & St. Jo. R.R. Co., 307.

10. *Slander.*—When the slanderous words used do not of themselves impute to the plaintiff the commission of a crime or offence involving moral turpitude, or some infamous punishment, the petition must contain an averment of the extrinsic matter necessary to show that the words are actionable. The words "he is a bushwhacker" are not actionable *per se*. Where the ground of complaint is that the plaintiff has been injured in his character, reputation, or business, the action cannot be maintained without an averment that the words were spoken of the plaintiff in reference thereto, and the words become actionable by reason of some special damage which must be averred and proved as laid.—Curry v. Collins, 324.

11. *Election—Voters.*—A petition in a suit against the judges of an election precinct for wrongfully refusing the plaintiff's vote, must set out the facts which give the plaintiff a cause of action, and show how he was entitled to vote, by stating the qualifications which gave him the right.—Curry v. Cabliss et als., 330.

12. *Petition—Relief—Demurrer.*—A petition is not subject to demurrer, because it asks for a judgment not warranted by the averments. The court may grant any relief consistent with the case made by the evidence and embraced within the issues.—Easley v. Prewitt et als., 361.

13. *Equity.*—It is improper to state matters of equity in the body of a count at law.—Billon & wife v. Larimore et als., 375.

14. *Equity.*—The distinction between law and equity still exists in our practice, and parties seeking equitable relief must set forth the facts in their pleadings in such a manner as to entitle them to the equitable relief prayed. Where matters of equitable jurisdiction are mixed and blended with matters of legal cognizance in the same count, the defect may be taken advantage of by demurrer, or by motion in arrest. Pleadings should be drawn with reference to these distinctions, though in the form prescribed by the statute.—Meyer v. Field et als., 434.

15. *Counter-claim.*—An answer of defendant, setting up an account of payments made by defendant to plaintiff, &c., is not a counter-claim, and is not confessed by the plaintiff's failing to file a replication; it is a plea of payment in bar of the action.—Holzbauer et al. v. Heine et al., 443.

16. *Evidence.*—No evidence is required of facts admitted by the pleadings.—Vallé v. North Missouri R.R. Co., 445.

17. *Mechanic's Lien.*—Where the petition upon a mechanic's lien alleged that ten days' notice of lien had been given, and the answer did not specifically deny the averment as to time, the allegation as to time must be taken as admitted.—Gorman v. Dierkes, 576.

18. *Contract.*—A party suing upon a contract for a stipulated consideration for services rendered, and averring performance, must show a reason for abandoning the contract price and seeking a recovery upon the *quantum meruit*.—Stoddard v. Murdock, 580.

19. *Note.*—A petition upon a note by an endorsee must allege the endorsements by which the plaintiff claims title. The note and its endorsements

PRACTICE, CIVIL *(Continued)*.

are no part of the petition, and cannot be made such by reference thereto.—
—Dyer v. Krayer, 603.

TRIALS, &C.

20. *Evidence — Exceptions.* — Evidence should be admitted or rejected when offered, and the bill of exceptions should show that the objections were made when the evidence was offered, with the specific reasons therefor.—Hann. & St. Jo. R.R. Co. v. Moore, 338.

21. *Evidence.*—The order in which evidence shall be introduced and admitted upon the trial rests in the sound discretion of the court.—Weston v. Clark, 568.

22. *Jury—Constitution.*—In trials at common law in courts of record, the parties are entitled to a jury of twelve men as a matter of constitutional right, and any consent to waive this right must be entered of record. If such consent do not appear of record, the party may avail himself of the objection by motion in arrest of judgment.—Brown v. Han. & St. Jo. R.R. Co., 298.

23. *Action for Personal Property.*—It is no bar to the plaintiff's right of action to recover possession of personal property delivered to him upon giving bond, &c., and damages for the detention thereof, that the plaintiff has sold and transferred the property since it was delivered to him under the process of the court.—Donohoe v. McAleer, 312.

See EVIDENCE.

24. *Assignment.*—A plaintiff suing as assignee of an account, must prove the fact of assignment.—Bersch, Assignee, v. Sander, 104.

25. *Instructions.*—Where all the facts in evidence do not prove, nor tend to prove, the issue, it is the duty of the court so to instruct the jury as a matter of law.—Jaccard et als. v. Anderson, 91.

26. *Instructions — Jury.* — It is the duty of the judge to give the jury proper instructions as to the law applicable to the facts of the case; and it is not proper to allow the jury to take with them law books from which they may determine the law for themselves.—Harrison v. Hance, 185.

27. *Instructions.*—Instructions should not be so framed, nor given and refused, as to exclude from the jury the consideration of the points which are fairly raised by the evidence.—Sawyer et al. v. Hann. & St. Jo. R.R. Co., 240.

28. *Instructions.*—Where, at the close of the plaintiff's case, there is no evidence proving the defendant's liability, the defendant has the right to ask the court to instruct the jury to find for the defendant. (Clark's Adm'x v. Hann. & St. Jo. R.R. Co., 36 Mo. 202, No. 4.)—Smith v. Hann. & St. Jo. R.R. Co., 287.

29. *Venue.*—Judgment reversed because the court refused a change of venue, the circuit judge having been of counsel.—Bailey v. Kimbrough, 182.

NEW TRIALS.

30. *Newly Discovered Evidence.* — A party applying for a new trial, upon the grounds of newly discovered evidence, or of surprise by the evidence given by his own witnesses, must show that he has used due diligence or care to direct the attention of the witnesses to the particular point of their testimony.—Howell's Exec'r v. Howell, 124.

PRACTICE, CIVIL *(Continued)*.

31. *Jury—Misbehavior.*—A traverse juror is not a competent witness to prove misbehavior in the jury. For a jury to make up the amount of the verdict by each juror naming a certain sum and then dividing the aggregate of the sums specified by the number of the jury, is an improper mode of making up the verdict, and is misbehavior on the part of the jury.—Sawyer et al. v. Han. & St. Jo. R.R. Co., 240.

32. *Injunction — Equity.* — A party who has failed to make his defence to a suit at law, and seeking the interposition of a court of equity, must show some substantial ground of relief which will bring the case under some head of equitable jurisdiction; such as fraud of the opposite party, uncontrollable accident, or mistake, unmixed with negligence or fault on his part. (Matson v. Field, 10 Mo. 100.)—Reed's Adm'r et al. v. Hansard, 199.

33. *Judgment.*—Where the defendant goes to trial without having filed an answer, and the damages are assessed without the previous entry of an interlocutory judgment, he will be considered as having waived the irregularity.—McClurg et als. v. Hurst, 144.

34. *Judgment—Process.*—Where process has been served upon a defendant, and judgment by default entered, the court cannot at a subsequent term, upon the mere suggestion of defendant, set aside the judgment upon the ground of defective service of process.—Bank of the State of Mo. v. Bray et al., 194.

See JUDGMENTS.

SUPREME COURT.

35. *Damages.*—Judgment affirmed, with ten per cent. damages, upon failure to file transcript of record and prosecute appeal.—Jasper et als. v. Miller et al., 124.

36. *Judgment.*—Judgment affirmed upon failure to file brief of points and authorities.—Reidey and wife v. Newell, 128.

37. *Excessive Damages—Verdict.* — Verdict set aside for excessive damages. —Sawyer et al. v. Hann. & St. Jo. R.R. Co., 240.

38. *Error and Exception.*—Distinction between error appearing of record and error appearing by exceptions.—Bateson v. Clark et als., 31.

39. *Appeal—Records.*—An appeal may be taken from the judgment of the Circuit Court rendered upon a citation issued by virtue of R. C. 1855, p. 1311, § 8, the same being a final judgment in a civil case.—Price v. Adamson, 145.

40. *New Trial.*—The Supreme Court will not reverse a judgment because the verdict is against the weight of evidence; but when there is no evidence, or the verdict is wholly unsupported by evidence, it will interfere and grant a new trial.—State v. Burnside, 343.

41. *Bill of Exceptions.*—Case stricken from the docket, the bill of exceptions not appearing from the transcript to have been signed by the judge, nor any appeal or writ of error taken.—Shotwell v. State, 359.

42. *New Trial.*—Judgment set aside because there was no evidence to authorize the verdict.—Nelson v. Boland, 432.

43. *Arbitrators — Awards.*—It is too late to urge in the Supreme Court, as an objection to an award, that the arbitrators were not sworn; the objection

PRACTICE, CIVIL (*Continued*).

should have been made in the court below.—Vallé v. North Missouri R.R. Co., 445.

44. *Exception.* — A party cannot present in the Supreme Court a matter of exception not presented in the court below.—Hause v. Carroll, 578.

45. *Judgment.* — Judgment affirmed under the peculiar circumstances.—Plogstart v. Rothenbucher, 452.

PRACTICE, CRIMINAL.

1. *Receiving Stolen Goods.*—In an indictment charging the defendant with receiving stolen goods with a guilty knowledge, it is not necessary that the name of the person who stole the goods should be stated.—State v. Smith, 58.

2. *Receiving Stolen Goods.* — Where a defendant is charged with having received stolen goods jointly with others, he may be convicted if the evidence show that himself separately received the property.—*Id.*

3. *Malicious Trespass — Evidence.* — Upon the trial of an indictment for unlawfully and maliciously taking down and removing a house, evidence that the defendant removed the house at the request of one who occupied and had apparent control of the premises is admissible to rebut the malicious intent. (R. C. 1855, p. 584.)—State v. Underwood, 225.

4. *Malicious Trespass.* — Although the defendant may have taken down and moved a dwelling-house without authority, a malicious intent must be proven, and is not to be presumed from the want of authority.—*Id.*

5. *Indictment.*—(R. C. 1855, p. 567, § 39.) Indictment charging defendant with feloniously assaulting another with a deadly weapon, and feloniously wounding, &c., is good.—State v. Ray, 365.

6. *Indictment — Merchant.* — An indictment which charges the defendant with unlawfully dealing, as a merchant, at his place, &c., without having a license, &c., by selling, &c., although informal, is good upon motion to quash, as the defect does not affect the substantial rights of the defendant. (State v. Cox, 32 Mo. 566.)—State v. Willis, 192.

7. *Evidence—Larceny.*—The possession of stolen property recently after its loss, is presumptive evidence of guilty possession, and if unexplained by attending circumstances, or the character of the possessor or otherwise, is taken as conclusive.—State v. Gray, 463.

8. *Jurors.*—Jurors must be impartial and wholly unprejudiced. Where a juror upon his *voir dire* has sworn that he had never formed or expressed an opinion as to the guilt or innocence of the prisoner, and after verdict of guilty, the defendant moved for a new trial, for the reason that the juror had before the trial declared that he believed the prisoner to be guilty, which fact the defendant only learned after verdict, and filing affidavit of respectable witnesses testifying to such expression of opinion on the part of the juror, the court should set aside the verdict and grant a new trial.—State v. Burnside, 343.

9. *Indictment.*—An indictment which charges an offence in the language of the statute creating it, is good. An indictment charging a party with administering medicine to a pregnant woman to procure an abortion or miscarriage, need not specify the kind, quality, or quantity of the medicine.—State v. Van Houten, 357.

PRACTICE, CRIMINAL *(Continued)*.

10. *Demurrer.*—A demurrer, or motion to quash an indictment, must specify particularly the grounds of objection.—*Id.*

11. *Demurrer.*—A demurrer, or motion to quash an indictment, must specify the grounds of objection. (R. C. 1855, p. 1176, § 24.)—State v. Webb, 366.

12. *Crimes—Military.*—A soldier in the army of the United States may be indicted for robbery, and prosecuted in the courts of the State of Missouri.—State v. Rogers, 367.

13. *Indictment.*—It is not necessary that the name of the prosecuting witness should be endorsed upon an indictment for felony.—*Id.*

14. *Writ.*—A clerical error in the date of a writ of *capias* issued, or in the return of service, is no ground for quashing an indictment.—*Id.*

15. *License—Indictment.*—An indictment, under the 4th section of the act, approved March 28, 1861, to prevent the adulteration of spirituous liquors in this State, which charges the defendant with unlawfully selling spirituous liquors, &c., without first having given bond, as required by the statute, is sufficient; the indictment need not negative the exceptions contained in § 6 of the act. (Acts 1860-61, p. 92.)—State v. Crowley, 369.

16. *Sunday.*—From 12 o'clock on Saturday night until 12 o'clock on Sunday night, no court can transact any business except to receive a verdict or discharge a jury. (R. C. 1855, p. 542, § 64.) The civil day Sunday is *dies non juridicus.*—State v. Green, 466.

17. *Counts.*—It is within the discretion of the court to compel the prosecutor to elect upon which of several counts he will submit the cause to the jury.—State v. Gray, 463.

18. *Receiving Stolen Goods—Evidence.*—Upon an indictment for receiving stolen goods, knowing them to have been stolen, the State must prove that the property was stolen and that the defendant received the property knowing it to have been stolen; and all the acts which go to prove the fact of the stealing are properly admissible in evidence as part of the *res gestæ.*—State v. Smith, 58.

PRINCIPAL AND AGENT.

Mortgage—Vendors and Purchasers.—A purchaser buying at a sale made by virtue of a power contained in a mortgage, buys at his peril.—Haley v. Bagley, 363.

R

REVENUE.

See CORPORATIONS, MUNICIPAL, 1, 2, 4.

1. *Corporations—Railroads.*—The lands granted by the State to the Hannibal and St. Joseph R. R. Co., by the act of Sept. 20, 1852, are not taxable for State and county purposes under the general revenue law. (Laws 1863-4, p. 65.) The property of the company is represented by its shares of stock, and there cannot be any other property over and above the stock held by the stockholders. (See Hann. & St. Jo. R.R. Co. v. Shacklett, 30 Mo. 550) —State v. Hann. & St. Jo. R.R. Co., 265.

2. *Constitution—Officers.*—The sheriff is, by virtue of his office as sheriff, collector of the State and county taxes; the two offices are one and inseparable.

REVENUE (*Continued*).

The ordinance of the Convention, passed March 17, 1865, vacating the offices of sheriffs, &c., on May 1, 1865, deprived the sheriffs of all authority as collectors of the revenue. The offices were vacated altogether.—Price v. Adamson, 145.

3. *Union Military Fund.*— A collector who has overpaid the amount due the Union Military fund, cannot require the Auditor to issue a warrant for his reimbursement payable out of any money in the State treasury. By law all warrants must be drawn payable out of a specific fund. (R. C. 1855, p. 1540, § 84.)—State ex rel. Long v. Auditor, 87.

4. *Officer—Action.*—The securities upon the official bond of the sheriff are liable to an action for the wrongful act of the sheriff as collector of revenue in levying upon property to enforce the payment of taxes illegally assessed upon property not subject to taxation. (See Hann. & St. Jo. R.R. Co. v. Shacklett, 30 Mo. 550.) If the property be not subject to taxation, the collector is a trespasser if he levy the tax, in the same manner as an officer would be in enforcing the process of a court having no jurisdiction of the subject matter.—State to use, &c., v. Shacklett et als., 280.

5. *Stamps—Justices' Courts.*— The act of Congress does not require that a stamp shall be affixed to the certificate of a justice of the peace certifying an appeal to the Circuit Court. The appeal is not an original process under our statutes.—Norris v. Hann. & St. Jo. R.R. Co., 286.

6. *Lands—Conveyances.*—Under the Revenue Act of November 23, 1857, § 33, the deeds executed by the Register are *prima facie* evidence of title in the purchaser only when duly executed and recorded. A deed is not duly executed unless it be proved or acknowledged in the manner provided by the "Act relating to conveyances"— R. C. 1855, p. 364. Without being proved or acknowledged, the deeds cannot be recorded.—Stierlein v. Daley et als., 483.

7. *City of St. Louis—Conveyances.*—A tax deed, made upon a sale of lands by the City of St. Louis for unpaid taxes, must show a strict compliance with the statute. (Acts 1857, p. 99, § 43.) All such statutes, authorizing proceedings which are to have the effect of divesting a citizen of his title to real estate, must be strictly construed and strictly pursued.—*Id.*

8. *Union Military Fund.*—When there are funds in the hands of the Treasurer for the redemption of Union Military bonds, and the Auditor has knowledge of that fact, it is the duty of the Auditor, upon bonds being presented, to calculate the principal and interest due upon such bonds and to draw his warrant upon the Treasurer for their payment, although upon a previous day bonds may have been presented and a warrant refused for the reason that there were no funds in the treasury applicable to their payment. The demands presented on any day should be taken up by the Auditor in the order they are presented, but a previous presentment on a day when there were no funds can have no effect to give any right of priority. (See State ex rel. Werkman v. Treasurer, 36 Mo. 49.)—Dyer v. Auditor, 157.

S

SALES.

See BILLS OF EXCHANGE, 6. CONTRACTS, 3, 6.

SECURITIES.

1. *Judgment.*—One of several securities against whom judgment has been recovered, cannot, upon paying the debt to the creditor, take an assignment of the judgment to himself and enforce payment thereof by execution against the property of his co-sureties.—McDaniel et al. v. Lee et al., 204.
2. *Mortgage.*—A surety may give to his co-sureties a mortgage to secure them against his liability for contribution.—Steele to use, &c., v. Farber et als., 71.
3. *Contribution.*—The makers of a promissory note who have signed the same as securities are liable to the holder for the full amount of the note. Secs. 7 & 8 of R. C. 1855, p. 1456, apply only to cases where one security is sued by his co-security.—Vaughn v. Haden et al., 178.

STRAYS.

See POSSESSION, 1.

SUNDAY.

See PRACTICE, CRIMINAL.

T

TENDER.

See PAYMENT.

U

USES AND TRUSTS.

See MORTGAGES, 1, 2. ASSIGNMENTS, 2.

1. *Equity—Trustee—Agent.*—A. being indebted to B. by note, as security for its payment transferred to B. a note of C.'s for a larger amount, secured by a deed of trust upon land, and the deed of trust itself. The note of C. not being paid, B. had the land sold by the trustee, and purchased at the trustee's sale. This land B. subsequetly sold for an amount more than sufficient to pay the note of A. *Held*, that, in collecting the collateral note, B. was acting as the agent of A., and was subject to all rights and disabilities incident to that character, and could not, under the circumstances, speculate for his private gain, to the prejudice of his principal.—Boardman v. Florez, 559.
2. *Equity.*—A party seeking to enforce a trust, to be entitled to relief in equity must show that a trust in the property was created for his benefit either in the sale of the property, or in some subsequent transaction. Trusts are express or implied. An express trust is created whenever the legal estate is conveyed to one competent to take as trustee for the benefit of one capable of holding as a beneficiary. Implied trusts may be raised upon the supposed intention of the parties as shown by their actions. The former is created by the act of the parties, the latter by the act and construction of law.—Foster et als. v. Friede et als., 36.

V

VENDORS AND PURCHASERS.

1. *Equity.*—A purchaser of land with notice of the equities of a prior purchaser, takes the land subject to such equities.—Gibson v. Lair et al., 188.
2. *Mistake—Parties.*—In a bill in equity, brought by the purchaser of land

VENDORS AND PURCHASERS *(Continued)*.

sold under a power given by a mortgage, to correct a mistake in the mortgage deed, the mortgagee is a necessary party.—Haley v. Bagley, 363.

3. *Mortgage.*—A purchaser buying at a sale made by virtue of a power contained in a mortgage, buys at his peril.—*Id.*
4. *Satute of Frauds.*—A purchaser may insist upon the defence of the statute of frauds, although he confess the parol agreement. (R. C. 1855, p. 1238, § 47.) A part performance, by the vendee, of a parol contract for the sale of lands will not avail the vendor.—Luckett v. Williamson, 388.
5. *Title.*—A vendor may enforce a specific performance of a contract for the sale of lands, if he can show a good title at the time of trial or decree.—*Id.*

W

WITNESSES.

1. *Evidence.*—The assignor of a note or chose in action is not a competent witness as to any facts occurring prior to the assignment.—Hendricks v. Ebbitt, 24.
2. *Note.*—The endorser of a note is a competent witness to prove that the note was endorsed without any consideration paid or given, and merely for collection.—Perry et al. v. Siter et als., 273.
3. *Competency.*—Where defendants jointly indicted are severally tried, the wife of the defendant not on trial is a competent witness for the co-defendant, except in cases of conspiracy and other joint offences.—State v. Burnside, 343.
4. *Assignor—Evidence.*—The assignor of a note is not a competent witness as to facts occurring anterior to the assignment, and his conversations with a witness in the absence of the plaintiff are merely heresay, and are inadmissible in evidence.—Labadie's Exec'r v. Chouteau et als., 413.
5. *Judgment Debtor.*—The judgment debtor is a competent witness for the plaintiff in an execution in the proceedings against a garnishee upon execution. He is not a party to the immediate record, neither is he an assignor, within the meaning of the statute.—Scales et al. v. Southern Hotel Company, 520.